

IN THE MATTER OF

*

BEFORE THE MARYLAND

ANDREW WILSON,

*

STATE BOARD OF

PHARMACY TECHNICIAN

*

PHARMACY

APPLICANT

*

Case No. PT-09-002

* * * * *

FINAL ORDER

Background

On or about June 17, 2008, the Maryland Board of Pharmacy (the "Board") received a pharmacy technician registration application from the respondent, Andrew Wilson. On his application, Mr. Wilson answered "No" to the question "Have you ever been convicted of a felony or any violation (felony or misdemeanor) of any law relating to the practice of pharmacy governing pharmacy technicians in any state, country or jurisdiction?" On his application, Mr. Wilson also answered "No" to the question "Have you pled guilty, nolo contendere, or been convicted of a felony or a crime involving moral turpitude, or received probation before judgment of any criminal act?" A Maryland Criminal Justice Information System ("CJIS") report revealed Mr. Wilson does indeed have a criminal history. On August 25, 2009, the Board issued Mr. Wilson a Notice of Intent to Deny Pharmacy Technician Registration Application charging him with violations of Md. Code, Health Occ., §§ 12-6B-02(b)(1) and 12-6B-09(2) and (21). A quorum of the Board held an evidentiary hearing on this matter on November 4, 2009, and its findings of fact and conclusions of law are set forth below.

SUMMARY OF THE EVIDENCE

A. Documents.

The following documents were admitted into evidence.

- | | |
|-------------------|--|
| State's Exhibit A | Indictment, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Criminal No. K-2001-1851 |
| State's Exhibit B | Criminal Hearing Sheet, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Case No. K-2001-1851.ID |
| State's Exhibit C | Information, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Criminal No. K-2001-1957 |
| State's Exhibit D | Criminal Hearing Sheet, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Case No. K-2001-1957.ID |
| State's Exhibit E | Information, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Criminal No. K-2001-2194 |
| State's Exhibit F | Criminal Hearing Sheet, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Case No. K-2001-2194.ID |
| State's Exhibit G | Statement of Charges, Circuit Court for Anne Arundel County, State of Maryland v. Wilson, Andrew, Case No. 006A000098307 |
| State's Exhibit H | Criminal Hearing Sheet, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Case No. K-2001-2270.JC |
| State's Exhibit I | Statement of Charges, Circuit Court for Anne Arundel County, State of Maryland v. Wilson, Andrew Nottingham, Case No. 003A00095273 |
| State's Exhibit J | Criminal Hearing Sheet, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Case No. K-2001-2273.JC |
| State's Exhibit K | Statement of Charges, Circuit Court for Anne Arundel County, State of Maryland v. Wilson, Andrew, Case No. 006A00102724 |
| State's Exhibit L | Criminal Hearing Sheet, Circuit Court for Anne Arundel County, State of Maryland v. Andrew Nottingham Wilson, Case No. K-2002-589 ID |
| State's Exhibit M | Pre-Trial Docket; Trial Docket; and Probation/Supervision Docket, District Court of Maryland for Queen Anne's County, State of Maryland v. Andrew Nottingham Wilson, Case No. 005M00008020 |

B. Witnesses.

Respondent:

Andrew Wilson, Respondent

Thomas Wilson, P.D., Respondent's father and pharmacy employer

C. Administrative Notice

Andrew Wilson's Pharmacy Technician Registration Application Grandfathered

FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds that the following facts are true:

1. Mr. Wilson applied to become a registered pharmacy technician on or about June 17, 2008.
2. On his application, Mr. Wilson answered "No" to question #4, "Have you ever been convicted of a felony or any violation (felony or misdemeanor) of any law relating to the practice of pharmacy governing pharmacy technicians in any state, country or jurisdiction?"
3. On his application, Mr. Wilson answered "No" to question #5, "Have you pled guilty, nolo contendere, or been convicted of a felony or a crime involving moral turpitude, or received probation before judgment of any criminal act?"
4. The Maryland CJIS report revealed that Mr. Wilson has a criminal history arising from arrests and/or charges occurring on the following dates: August 2, 2001; August 17, 2001; September 13, 2001; February 15, 2002; and November 8, 2005.
5. On or about November 30, 2001 Mr. Wilson pled guilty in the Circuit Court for Anne Arundel County of five (5) counts of theft, each for an amount

exceeding \$500, and was sentenced to three (3) years incarceration with all but ten (10) days suspended. Mr. Wilson was placed on supervised probation for three (3) years, was ordered to perform two hundred (200) hours of community service, and was ordered to pay restitution and court costs. (State's Exhibits A, B, C, D, E, F, G, H, I, J)

6. On or about July 9, 2002, Mr. Wilson pled guilty in the Circuit Court for Anne Arundel County to one (1) count of theft for an amount exceeding \$500 and was sentenced to a five (5) year suspended sentence. Mr. Wilson was placed on probation for a period of five (5) years and was ordered to pay restitution and court costs. (State's Exhibits K, L)
7. On or about April 12, 2002, Mr. Wilson pled guilty in the District Court for Queen Anne's County of one (1) count of theft for an amount exceeding \$500 and was sentenced to five (5) years incarceration with four (4) years, nine (9) months suspended, and ordered to pay restitution and court costs. Mr. Wilson was also placed on supervised probation for three (3) years. (State's Ex. M)
8. The aforementioned crimes are felonies and crimes involving moral turpitude.

OPINION

In its effort to protect public health, the Board has established requirements for registration as a pharmacy technician in order to ensure that only qualified individuals are involved in the performance of delegated pharmacy acts.¹ One of these qualifications requires an applicant to "[b]e of good moral character." Md. Code, Health Occ., § 12-

¹ Pharmacy technicians perform various duties in the medication dispensing process. See Md. Code, Health Occ., § 12-101(e). Pharmacy technicians typically have access to all drugs in the pharmacy, including controlled dangerous substances.

6B-02(b)(1). In determining an applicant's "good moral character," the Board reviews the applicant's answers to a series of questions on the Personal Attestation page of the application and the applicant's Maryland criminal history report prepared by CJIS. The Board also reviews the applicant's explanation for any questions to which the applicant has answered "yes" on the Personal Attestation page. The instructions on the Personal Attestation page of the application clearly state: "If you answer 'yes' to any question, please provide a detailed explanation and attach any supporting documents."²

On his application, Mr. Wilson answered "No" to question #4, "Have you ever been convicted of a felony or any violation (felony or misdemeanor) of any law relating to the practice of pharmacy governing pharmacy technicians in any state, country or jurisdiction?" Mr. Wilson testified that he answered "No" to question #4 because of his belief that his theft convictions did not relate to the practice of pharmacy governing pharmacy technicians. Mr. Wilson testified that his father and pharmacy employer, Mr. Thomas Wilson, advised him to answer "No" to this question. Mr. Thomas Wilson corroborated his son's testimony. The Board concedes there is a possibility Mr. Wilson may have genuinely believed he was answering question #4 correctly.

However, Mr. Wilson should have known not to answer "No" to question #5, "Have you pled guilty, nolo contendere, or been convicted of a felony or a crime involving moral turpitude, or received probation before judgment of any criminal act?" (Emphasis added).

Regarding the first part of question #5, Mr. Wilson testified that he understood the definition of the term "felony" as it was used in that question. (Wilson Hrg. Tr. at 21).

² Even upon receipt of a copy of his CJIS report, Mr. Wilson failed to provide an explanation for his extensive criminal history. Because he answered "No" to both of these questions, Mr. Wilson also failed to supply an explanation regarding his previous convictions.

Mr. Wilson also testified that he was aware that he had pled guilty to "a bunch" of felonies prior to completing his application. (Wilson Hrg. Tr. at 21).

Despite his understanding of the term "felony," Mr. Wilson testified that he answered "No" to question #5 because he did not understand the second part of the disjunctive question as it pertained to "a crime involving moral turpitude." Further, Mr. Wilson testified that he again consulted Mr. Thomas Wilson, who advised him to answer "No" to question #5. (Wilson Hrg. Tr. at 17). Mr. Thomas Wilson testified that he understood "a crime involving moral turpitude" to be a crime related to a "sex offense" or a "hate crime." (Wilson Hrg. Tr. at 30). Despite their inability to fully comprehend the definition of "a crime involving moral turpitude," both Mr. Wilson and his father testified that they had failed to consult an attorney when completing the application. (Wilson Hrg. Tr. at 35).

Since theft is a crime "involving *intentional dishonesty* for the purposes of personal gain" the Board finds there is no question that Mr. Wilson's previous convictions for theft constitute crimes of moral turpitude. *Oltman v. Maryland State Bd. of Physicians*, 162 Md.App. 457, 471, 875 A.2d 200, 208 (2005), citing *Atty Grievance Comm'n of Maryland v. Klauber*, 289 Md. 446, 457, 423 A.2d 578, 583 (1981). (Emphasis in original).

Maryland Code, Health Occ., § 12-6B-09(21) provides that grounds for denial of a pharmacy technician registration include "if the applicant...[p]lead guilty or nolo contendere to a felony or to a crime involving moral turpitude...." There is no dispute that Mr. Wilson has pled guilty to seven (7) counts of theft.

Moreover, the Board finds Mr. Wilson's omissions of his criminal conduct on his application amount to a violation of Md. Code, Health Occ. § 12-6B-09(2), which provides that

the Board may deny a pharmacy technician's registration to any applicant...[or] place any pharmacy technician's registration on probation...if the applicant...(2) Fraudulently or deceptively obtains or attempts to obtain a pharmacy technician's registration for the applicant or assists or attempts to assist another in fraudulently or deceptively obtaining a pharmacy technician's registration.

Mr. Wilson and his father testified that Mr. Wilson was aware that his criminal history would be revealed once he submitted his fingerprints for a CJIS report and that Mr. Wilson was not intentionally seeking to deceive the Board by answering "No" to question #5.

The Board finds it very unfortunate that Mr. Wilson took the non-legal advice of Mr. Thomas Wilson in completing his application. Mr. Wilson also testified that he has not been involved in any criminal behavior since 2002 and is currently applying to pharmacy school.

Based only upon the mitigating factors presented by Mr. Wilson is the Board graciously granting Mr. Wilson a probationary registration.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes that Mr. Wilson has violated Md. Code, Health Occ., §§ 12-6B-02(b)(1) and 12-6B-09(2) and (21).

ORDER

Based on the foregoing, by a unanimous decision of the Board, it is hereby:

ORDERED that Mr. Wilson be GRANTED a pharmacy technician registration;
and be it further;

ORDERED that Mr. Wilson's pharmacy technician registration shall be immediately placed on PROBATION for at least five (5) years from the date of this Order; and be it further,

ORDERED that during the term of his probation Mr. Wilson shall:

1. submit to a CJIS background check at each registration renewal, the results of which shall indicate that Mr. Wilson has not incurred further criminal violations;
 2. ensure that his pharmacy employer submits quarterly reports to the Board regarding his performance;
 3. successfully complete a college level Board-approved ethics course within six (6) months from the date of this Order and provide proof of the same to the Board;
- and be it further,

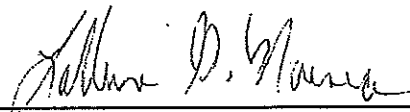
ORDERED that in the event Mr. Wilson's violates any of the terms of this probation, the Board may impose further disciplinary action against Mr. Wilson's registration, including revocation, after notice and an opportunity for a hearing; and be it further,

ORDERED that upon full completion of the five (5) years of his probation, Mr. Wilson may petition the Board to lift the probation provided he has fully complied with all of the terms and conditions in this Order and provided that he has no outstanding complaints against him, and be it further,

ORDERED that Mr. Wilson is responsible for all costs associated with this Order; and be it further,

ORDERED that this is a final order of the Board and as such is a PUBLIC DOCUMENT pursuant to Md. Code, State Gov't Art., §10-611, *et seq.*

12/3/09
Date



LaVerne G. Naesea, Executive Director
for
Donald Taylor, P.D.
President, Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code, Health Occ. Art., §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days from the date of mailing of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code, State Gov't Art., §10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

LICENSE, REGISTRATION, OR CERTIFICATION

Board of
PHARMACY

4201 PATTERSON AVENUE
BALTIMORE, MARYLAND 21215

ANDREW N WILSON

813 BRECHIN GARTH

ARNOLD

MD

21012

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

08298

THE MARYLAND STATE BOARD OF

PHARMACY
CERTIFIES THAT

ANDREW N WILSON

IS A REGISTERED
PHARMACY TECHNICIAN

In accordance with the Health Occupations Article of the Annotated Code of Maryland

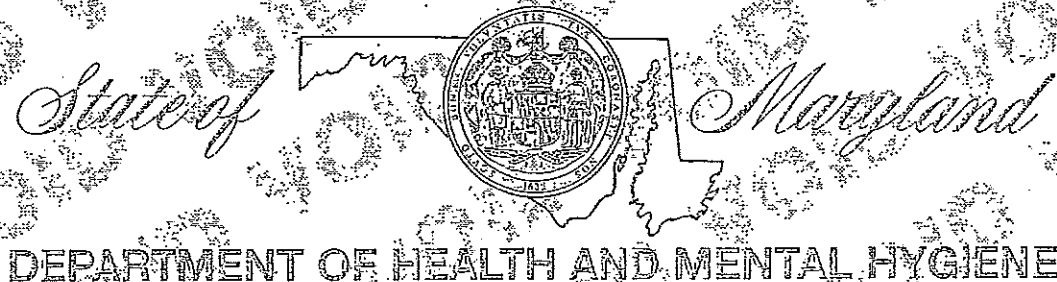
LIC. REG. CERT. NO.

T06730

EXPIRATION DATE

5/31/2011

SIGNATURE OF BEARER



THE MARYLAND STATE BOARD OF PHARMACY
CERTIFIES THAT ANDREW N WILSON
IS A REGISTERED PHARMACY TECHNICIAN

IN ACCORDANCE WITH THE HEALTH OCCUPATIONS ARTICLE OF THE ANNOTATED CODE OF MARYLAND

REGISTRATION NO.

T06730

EXPIRATION DATE

5/31/2011

WHERE REQUIRED BY LAW THIS MUST BE CONSPICUOUSLY DISPLAYED IN OFFICE TO WHICH IT APPLIES

John C. Blum
SECRETARY D.H.M.H.

Pharmacy Technician Change of Information

A Pharmacy Technician must report changes in their names, addresses, place of employment or other contact information in order to receive renewal notices, newsletters and other important information. A copy of a legal document, such as a Marriage Certificate, must accompany name changes.

To report changes, submit the Pharmacy Technician Change of Information Form. The form may be downloaded from the Board's website at www.mdbop.org - click on Form & Publications, or contact the Board to have the form sent to you.

Return the completed form by mail, fax or eMail to:

Maryland Board of Pharmacy
4201 Patterson Avenue
Baltimore, Maryland 21215
(410) 764-4755 (410) 358-6207 fax



STATE OF MARYLAND

DHMH

Department of Health and Mental Hygiene

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

MARYLAND BOARD OF PHARMACY

4201 Patterson Avenue, Baltimore, Maryland 21215-2299

Donald Taylor, Board President – LaVerne G. Naesea, Executive Director

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
ARTICLE #7008 1830 0001 1597 9285

December 3, 2009

Alan Hilliard Legum, P.A.
Attorneys at Law
Judd Legum, Esq.
275 West Street, Suite 305
Annapolis, Maryland 21401

Re: Andrew N. Wilson
Case Number PT09-002

Dear Mr. Legum,

Enclosed please find the executed Final Order granting your client, Mr. Wilson, a probationary pharmacy technician registration. His registration certificate is also enclosed.

Please contact me at 410-764-4794 should have any questions regarding this matter.

Sincerely,

LaVerne G. Naesea,
Executive Director

Enclosures

CC: Francesca Gibbs, Board Counsel
Sherrai V. Hamm, Assistant Attorney General
Summar J. Goodman, Acting Licensing Manager
Steven Kreindler, Compliance Specialist
Binder